

(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Katsumi Tomioka

Confirmation No.: 7121

Application No.: 10/038,545

Art Unit: 2633

Filed: October 24, 2001

Examiner: D.J. Lee

For: OPTICAL SUBSCRIBER SYSTEM AND  
TRANSMISSION LINE DISTANCE  
MONITORING METHOD

Docket No.: H1139.0107

**APPELLANT'S REPLY BRIEF**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is pursuant to 37 C.F.R. § 41.41(a), and is responsive to the Examiner's Answer<sup>1</sup> mailed on September 28, 2006, in connection with the Appeal from the final rejection of claims 1-12 mailed February 8, 2005 in the subject application.

No fee is believed due for the filing of this Reply Brief. Should any fee be required, the Office is authorized to charge such fee to Deposit Account No. 50-2215.

Appellant wishes to thank the Examiner for the above-identified Examiner's Answer. However, for reasons presented in appellant's Appeal Brief and submitted below, appellant maintains his position that each of the pending claims is patentable over the references cited by the Examiner.

<sup>1</sup> A second Examiner's Answer was issued on November 1, 2006, in which the Examiner added Section (I) and supplemented Section (8) in the first Answer. Because the second Examiner's Answer does not change the substance of the first Answer, the subject Reply Brief will address only the first Answer dated September 28, 2006.

In the Examiner's Answer, the Examiner presented arguments in rebuttal of the positions taken in the appellant's Appeal Brief. Several statements made in connection with these rebuttal points are incorrect and/or misleading and will be addressed below.

I. Mischaracterization of Appellant's Position

On page 3 of the Examiner's Answer, the Examiner stated the following (original emphasis):

The cited prior art discloses, as submitted by Appellant, a transmission line distance monitor/processor unit which...judges whether the transmission line distance is larger or smaller than a previously measured reference value.

Also, on page 4, last paragraph, of the Examiner's Answer, the Examiner stated that:

As submitted by Appellant and as suggested by the cited prior art, Effenberger teaches that the reference value is "previously measured."

Appellant disagrees with the above statements. Appellant wishes to clarify the records and for the Board that the above statements contradict appellant's position. Appellant has repeatedly argued that the "measured values" in Effenberger are not and cannot be held as "a reference value" as required in the claimed invention. The above statements in the Examiner's Answer mischaracterized and materially altered appellant's position.

II. Misquotation of Appellant's Remarks

On page 4, lines 4-8 of the Examiner's Answer, the Examiner misquoted appellant's remarks as follows (original emphasis):

"[Appellant] respectfully disagrees that the previously measured reference values in Effenberger read on the claimed 'predetermined reference value'...[Appellant] strongly disagrees with the Examiner's

characterization of Effenberger's measured value (e.g., previously measured distance of ONU1) to be a predetermined reference value as required in independent claims 1 and 5" (pg. 6, 2<sup>nd</sup> paragraph, pa. 7, 1<sup>st</sup> full paragraph, Appeal Brief, original emphasis)

Appellant wishes to clarify that the above quotation inaccurately included the additional word "reference" (the second line of the above quotation). The relevant portions in appellant's Appeal Brief read as follows:

Applicant respectfully disagrees that the previously measured values in Effenberger read on the claimed "predetermined reference value." (Page 6, second paragraph of Appeal Brief)

[A]pplicant strongly disagrees with the Examiner's characterization of Effenberger's **measured** value (e.g., previously measured distance of ONU1) to be a predetermined reference value as required in independent claims 1 and 5. (Page 7, first full paragraph of Appeal Brief, original emphasis)

The above misquotation in the Examiner's Answer both mischaracterized and materially altered appellant's position.

### III. Misinterpretation of the Claims

On page 6, lines 3 and 4 of the Examiner's Answer, the Examiner stated the following (original emphasis):

It is noted that the instant claims do not disclose the limitation "comparing each transmission line distance with a predetermined reference value."

Appellant disagrees. Independent claim 1 recites "measures ... **the transmission line distance** between the station equipment and **each** of the subscriber units" and "judges whether **the transmission line distance** is larger or smaller than a predetermined reference value." In light of the above claim language, independent claim 1 in the subject application requires that **each** measured transmission line distance is compared with a predetermined reference value.

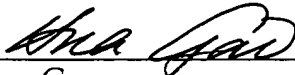
Similarly, independent claim 5 recites "[a] method for monitoring the **transmission line distance** between station equipment and **each** of a plurality of subscriber units", "measuring the transmission line distance", and "judging whether the **transmission line distance** is larger or smaller than a predetermined reference value." Therefore, independent claim 5 also requires that **each** measured transmission line distance is compared with a predetermined reference value.

In view of the foregoing, the rebuttal arguments in the Examiner's Answer are unsustainable. All other arguments relating to the patentability of the claims and set forth in the Appeal Brief are maintained.

For at least the reasons set forth above, and those identified in the Appeal Brief, appellant respectfully submits that neither the Final Office Action nor the Examiner's Answer establishes a *prima facie* case under Section 103. Reversal of the final rejection of claims 1-12 is accordingly respectfully requested.

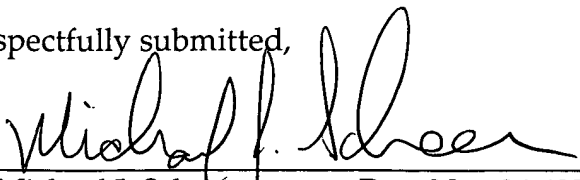
Respectfully submitted,

Dated: November 16, 2006

By  (40,414)  
Hua Gao Reg. No.: 40,414  
**DICKSTEIN SHAPIRO LLP**  
1177 Avenue of the Americas  
New York, New York 10036-2714  
(212) 277-6500  
Attorneys for Appellant

Respectfully submitted,

Dated: November 16, 2006

By   
Michael J. Scheer Reg. No.: 34,425  
**DICKSTEIN SHAPIRO LLP**  
1177 Avenue of the Americas  
New York, New York 10036-2714  
(212) 277-6500  
Attorneys for Appellant